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C O N F I D E N T I A L SECTION 01 OF 02 QUITO 000798

SIPDIS

DEPT PASS USTR BENNETT HARMAN

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SUBJECT: OXY: SERIOUS DIALOGUE WITH GOE

REF: QUITO 681

Classified By: Ambassador Kristie A. Kenney Reasons 1.4 (b),(d)

11. (C) Summary. President Gutierrez's assignment of a close advisor to resolve commercial disputes seems to have energized GOE efforts. Ambassador and Embassy officials continue to encourage dialogue between the parties. Serious discussions and information trading represent the first real progress in resolving Oxy's problems with the GOE. However, it is only a start and many issues, including Oxy's \$75 million arbitration award are not yet on the table. End Summary.

Polit Becomes the Go-To Guy

12. (C) President Gutierrez, with the encouragement of Trade Minister Ivonne Baki and the Ambassador, named his close advisor and Secretary of the Presidency Carlos Polit as his point person for resolving commercial disputes. Gutierrez gave Polit marching orders to resolve outstanding disputes, beginning with Occidental Petroleum (Oxy). Oxy had, most recently, been negotiating with state oil company PetroEcuador President Hugo Bonilla (reftel). Though receptive to discussions with Oxy, it quickly became clear that Bonilla would not be able to close the deal. Polit too recognized that Bonilla was too concerned about possible future repercussions against him and has played an active role in negotiations.

Encouraging Action

13. (C) In the past week, the Ambassador met with President Gutierrez, Minister of Economy and Finance Yopez, Minister of Trade Baki and Carlos Polit urging all to take action now to resolve the Oxy dispute. She also met with former Minister of Economy and Ecuador's next Ambassador to Washington Mauricio Pozo about Oxy. Polit told the Ambassador April 12 that the President had given him clear orders to resolve Oxy's and other disputes with US companies.

14. (C) Oxy Ecuador President and GM Jerry Ellis said that Oxy has provided "generous" offers to the GOE. Ellis said that Bonilla was afraid to make a final deal and had provided Oxy with very unrealistic settlement numbers. Ellis said he understood Bonilla's realistic fear of possible legal actions against him in the future if it were perceived that Bonilla did not sufficiently protect the national patrimony and squeeze more out of Oxy. Polit looked at Oxy's offer much more favorably and Oxy has since sweetened the deal even more for the GOE.

A Long Way to Go

15. (C) The negotiations are currently focused on resolving the matter of the GOE threat to expropriate Oxy's assets for alleged failures to comply with Ecuadorian law, chiefly on the transfer of a financial interest in one of its blocks to Canadian oil company EnCana. Oxy and Bonilla have expressed interest in resolving all outstanding disputes, including Oxy's \$75 million (and growing) international arbitration award, deductibility of interest for related-company loans, regulatory treatment (discrimination), etc. For now though, both sides appear encouraged that serious discussions are being held to resolve the expropriation (caducity) issue.

16. (C) If an agreement can be reached, Polit and we have received assurances from Ecuador's Procurador Jose Maria Borja (Solicitor General equivalent) that he would support a fairly negotiated agreement. Numerous GOE officials, including Polit and Borja, have also said that the negotiated agreement might also have to be put to Congress for approval. Congressional approval is not required under the contract or by Ecuadorian law. However, it may be necessary for political purposes. Borja has also told us that with his concurrence he is sure he can win approval by the Ecuadorian Congress.

Comment

17. (C) We will continue to press for dialogue and action by the GOE. Oxy has shown good faith in providing solid offers to the GOE. We are wary about the idea of seeking congressional approval, but will wait to cross that bridge until an agreement is reached. While there are many details to be worked out, this is the most progress we have seen on the matter in a long time.

KENNEY